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R E M A R K S
ON THE
PROPRIETY AND EXPEDIENCY
OF THE
A G R E E M E N T
ENTERED INTO BETWEEN THE
COMMISSIONERS
FOR
MAKING WIDE AND CONVENIENT STREETS
IN THE CITY OF DUBLIN,
AND
MR. HENRY OTTIWELL,
GROUNDED ON THE
E V I D E N C E
LAID BEFORE THE
COMMITTEE OF THE HOUSE OF LORDS,
APPOINTED IN THE
S E S S I O N O F 1794,
TO ENQUIRE INTO THE
CONDUCT OF SAID COMMISSIONERS.

D U B L I N :
PRINTED IN THE YEAR 1794.

1609/1958.



R E M A R K S, &c.

TH E frequent misapplication and prodigal expenditure of public money in this country, has long been a subject of loud and general complaint, and is indeed a severe, and I fear merited, reproach to our morals and honesty. I mean to speak here only of such national works as have from time to time been undertaken at national expence. Of these some have been abandoned, after a very expensive experiment, because at length they were found to be impracticable. Others, because their funds had been embezzled or diverted into improper channels. It sometimes happened that the work was commenced on a scale so magnificent and unsuitable, that the finances were speedily exhausted, and the work put a stop to almost as soon as it could well be said to have been begun. In all, there appears to have been much error, not unfrequently blended with fraud and peculation. But whatever the cause of miscarriage may have been, the fact is certain, that very few of those undertakings have been completed, and those few at an expence so enormous, as to render them a very dear purchase to the public, however profitable they may have

been to the individuals who conducted them. This evil is the more formidable, from the difficulty of calling delinquents to account. The several undertakings have been usually committed to the management of persons strongly fortified and entrenched in party and powerful connections, who have generally been able to stifle every attempt that has been made to enquire into the causes of their miscarrying; they have also very often experienced powerful auxiliary support in their emergencies, from that sympathy and fellow-feeling which are apt to prevail amongst men engaged in similar occupations, whose morality upon such occasions is apt to suggest to them the expediency of *doing to others, what they would that others should do unto them.*

There are few subjects which have attracted the attention of the public more than the enquiry into the conduct of the Commissioners for making wide and convenient streets in the city of Dublin, respecting their agreement with Mr. Henry Ottiwell; this enquiry was brought forward by Lord Farnham in the session of 1793, and renewed by Lord Dillon in that of 1794. The Committee made their report in 1793, shortly before the close of that session, but there was not time, before the prorogation, for the house to take the same into their consideration. Had the report been improper, the true parliamentary mode of proceeding would have been, to have pointed out the impropriety to the house, and to have had the report recommitted; no such step however was taken.

In the session of 1794, Lord Dillon having moved that a Committee should be appointed to proceed in said enquiry, the report of the former Committee was attacked with great acrimony, and much personality



personality against Lord Farnham as chairman of that Committee. The motion for the Committee for the further investigating of that business was however acceded to: the Committee of 1794, proceeded with great attention to examine witnesses in the matter referred to them, but finding that the session was to end on the 25th day of March, they desisted from the further examination of witnesses, as the delay in consequence would necessarily have prevented them from making their report during that session. They accordingly reported on that day, and therein set forth the evidence laid before them, without making any observation or comment upon it. This report has been printed. The public are in possession of it, and will form their opinion upon the evidence it contains.

Immediately after the late prorogation, a torrent of abuse issued from the public prints against the Committee of 1793, and the noble Lord who brought forward that enquiry. There was particularly one publication in the Morning Post, of the 27th of March, in which the author appears to have taken much pains to mislead the public, by assertions of facts, totally unfounded, and grossly mistating the resolutions of the Committee, which he was the better enabled to do, as those resolutions have not been printed or entered upon the journals of the house. Those publications stopped for some time, but on the 29th of April, there appeared in the Morning Post, another, so scurrilous and abusive, and so full of misrepresentations and mistatement of facts, that it seems necessary to lay before the public, the evidence as it really stands in that report, in order to prevent them from being misled by such misrepresentations. This I consider as the most effectual manner of
refuting

refuting the charges brought against the Committee of 1793, as I shall thereby, from the evidence which has been printed, support the propriety of all those resolutions which that Committee had entered into.

In respect to the scurrility thrown out against Lord Farnham, very little indeed need be said; it is not pretended by the author that he has any property in this city which can be effected by the agreement with Mr. Ottiwell, or that he could have any personal resentment against Mr. Ottiwell, a man totally unknown to him: that there was sufficient reason for the enquiry he undertook, is clearly proved from the evidence of Mr. Cope, who says, that the agreement with Mr. Ottiwell occasioned a general outcry in the city, the causes for which he states to have been, that the grounds had been let to Mr. Ottiwell without advertising them, and giving the public an opportunity of bidding for them: that the Commissioners had let such grounds before they had obtained possession of them, although they never had in any instance done so before. That they had set so large a quantity to him, though they had always before set their grounds in detail, and that it had not been publicly known, that the Commissioners would treat for any grounds of which they were not in possession.

Those effusions of abuse must therefore be attributed to the malignity, or self-interested motives of those men, who were apprehensive that the enquiry which that noble Lord instituted, might tend to disappoint them in their views of enriching themselves at the expence of the public. Whereas it appears to me, that the enmity of such men is the only thing which Lord Farnham

ham can acquire by preventing such agreement from taking place.

In the publication of the 27th of March, it is alledged, that the Committee of 1793 was held in secret; an allegation so ridiculous, and so notoriously false, that it scarcely deserves notice. That the bargain which the Committee charged to have been hastily and improvidently entered into, underwent six months serious consideration. That the intention of the board to set, sell, and treat for the grounds contained in that agreement with Mr. Ottiwell, had been advertised, notified, and made public. The author of that paper mistakes several of the resolutions of the Committee, and grounds objections to them, which principally arise from his own misstatement. In the following sheets I shall endeavour to shew, that those charges against the Committee are totally unfounded; for which purpose I shall resort to the evidence contained in the printed report of 1794, the evidence laid before the Committee in 1793, not having been published. In order that such evidence may be the better understood, I shall arrange the facts according to the times in which they appear to have respectively happened, and for the satisfaction of the reader, shall refer to those parts of said report wherein they are contained.

It is now 37 years since the board was first instituted; their powers of setting or selling are contained in the 31st George II. chapter 19. and have never been since enlarged. It does not appear that they ever attempted, from that time, until they entered into the agreement with Mr. Ottiwell, to exercise a power of setting any grounds until after they had purchased them. Mr. Sherrard (a) proves this. He says, he does
not

(a) Report of the Lord's Committee, page 10.

not know of any instance of the Commissioners, previous to their bargain with Mr. Ottiwell, setting or selling any ground, until they had purchased it, and got it into their actual possession. As I shall in the sequel often refer to the evidence of Mr. Sherrard, it will be proper to shew in what light he is considered by the Board. Mr. Caldwell says, he is a man very much confided in by the board for his knowledge in valuing grounds, and Mr. Trench says, that he is a man in whose valuations the Board have great confidence. It appears by this report, that Mr. Beresford was principally active in forwarding the lines in question. Mr. Sherrard (a) says, that frequently, when any difficulty occurred, he was desired to consult Mr. Beresford, and to request his attendance at the Board; that he often consulted him, of his own accord, when any such difficulty occurred; that he had many conferences with him in the winter 1790, and spring 1791, upon the state of the funds, and the most feasible manner of carrying into execution the lines from Sackville-street to the Custom-house. From this evidence it appears, that Mr. Beresford was a person who took a principal part in conducting that business, and upon whom the Board very much relied.

The first step taken for setting any of the grounds, on the north side of the river, was on the 30th of March, 1789, (b) on which day seven lots were set up by auction, not collectively, but in detail: These lots were set up at different prices, from 20s. a foot, to 1*l.* 14*s.* 1½*d.* and were set at rents from 29*s.* to 3*l.* 1*s.* a foot (c).

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(a) Report of the Lord's Committee, page 47.

(b) Ibid, page 10.

(c) Ibid, page 10.

There was an auction in July 1790, at which the rents of the said seven lots were sold, which were the only auctions that appear to have been held for the setting or selling any of those grounds, before that of the 7th February 1791, and it does not appear from the evidence, that there was any complaint of combinations having been entered into at either of said auctions, which could give occasion to guard particularly against such, previous to the auction which was to be held on the 7th February 1791. The first step which appears to have been taken in Mr. Ottiwell's business is set forth in his evidence, (a) he says that he had attended at different auctions of the grounds set by the Commissioners, and that it appeared to him a party business among the builders, and that no person not of their profession had a chance of getting any grounds. That about six, seven, or eight months before he gave in his proposal, he wrote to a person who lived with Lord Ormond, to assist him in the valuing said grounds, told him there was a knot among the builders, and that he wished to propose for the whole, took him over the grounds, and desired his advice which he gave him, viz. that if he exceeded 30s. for the main streets, and 15s. or 16s. for the bye streets, it would be a heavy business. He was a week with him making such valuation; as the proposal was given in the 6th of May, 1791. It appears from this account, that his intention to propose existed in October or November 1790, and did not arise, as alledged in the evidence of Mr. Darley; from the conversation he had in February 1791, with Mr. Beresford, at which Mr. Ottiwell

(a) Report of the Lord's Committee, page 90.

well was present; from this evidence of Mr. Ottiwell, it appears what were the motives which induced him to propose for those grounds in the manner he did. That he wished to avoid a competition with the builders; and that he had had it in contemplation to bid for those grounds, at least three months before the 7th of February 1791, on which day the auction was held. That during the whole of that time he was in possession of that information, which was to regulate the proposal to be made by him. The combination among the builders, complained of by him, could not take effect, in any other manner than by their out bidding such persons as were not of their profession; but if such persons were willing to give the real value, the builders must in such case, in order to give it effect, bid for the grounds more than they were really worth. Such a combination was of utility to the Board, as it insured to them a full value for their grounds. The competition to which public auctions were open, did not suit Mr. Ottiwell's views, and his object seems to have been to propose in such a manner as to preclude all competition. The valuation made for Mr. Ottiwell included all the grounds, either in the possession of the Commissioners or intended to be afterwards purchased by them, and consequently those afterwards set up by auction. At that time, no complaint existed of a combination among the builders against the Commissioners; their general practice had been to let their grounds, by auction in detail, and they had found that at such sales, they had set those grounds at fair and equitable prices; Mr. Ottiwell might naturally suppose, that if he had been to propose at that time for all those grounds, the Board would not then

then be prevailed on to depart from their customary mode of proceeding, in which they had hitherto so well succeeded; he therefore very prudently postponed giving in his proposal, until some foundation should be laid to induce them to depart from their usual mode of setting; one would even suppose that he had anticipated what happened upon the 7th of February; if a sale had taken place on that day, it would have broken in upon his intention of bidding *for the whole* of what had been valued for him; these reasons may have induced Mr. Ottiwell to postpone giving in his proposal, until such time as the Board should be properly prepared to receive it. In order to effect this, it became necessary that the general practice which had been pursued by the Board of disposing of their ground by auction, should be cryed down, and that the Board should somehow, be impressed with an idea, that there was a combination among the builders; and that they would not bid for their grounds, unless they could procure them greatly under their value; even this would not be sufficient to answer the intended purpose, unless some plan should be also devised, by which Mr. Ottiwell might be able to have his proposal considered by the Board, without also giving to others an opportunity of giving in proposals; as a competition by proposal, would be as injurious to his views, as a competition between persons bidding at an auction. In order to prevent a sale by auction, no method could be devised, which was so likely to succeed as fixing a price at which the grounds should be set up above their value; an estimate had been made by Mr. Sherrard, by which the value of the grounds to be set up was known to Mr. Beresford, they had therein

therein been estimated at 30s. per foot, and there was no reason to expect that bidders would take them at a higher rent. This was the very price at which Mr. Sherrard was directed by the Board that those grounds should be set up at; and it appears by his evidence, that according to the rules of the sale by which there must be three bidders, with a rise of one shilling at each bidding, they could not be obtained for less than 1*l.* 13*s.* which was 3*s.* above their estimated value; a large company attended, one lott was sett up at 30s. and as might naturally be expected no person bid more. Mr. Sherrard was applied to by the company to sett the lott up at a lower rate, which he refused to comply with, and thereupon the sale was adjourned, without ever trying any other lott or any other price. The aforesaid transaction was the only evidence of a combination among the bidders, and was the flimsy pretence, upon which it was proclaimed, that it was in vain to try sales by auction, whilst such combination existed. *It is* observable that it never had been alledged that such combinations existed at any of the former sales, and the prices at which their grounds had been sold clearly proved the contrary. Having so far succeeded in crying down sales by auction, another difficulty still remained, to contrive matters so that Mr. Ottiwell should not have any competitors with respect to the ground he intended to propose for; to prevent this, it was necessary that his intentions to propose should be kept secret from the board, which would prevent the inserting any advertisements to notify to the public the intentions of the board to receive proposals. The most likely mode of succeeding with the board was to dazzle them with the magnitude of his proposal,

propofal, and to take them by furprize, I fay by furprize, being well convinced that that board confifts of men who would not knowingly enter into any agreement which appeared to them injurious to the public, nor would they exercife any power which they did not think they were legally poffeffed of. Boards, as well as Individuals, are fubject to errors, and to be impofed upon by the cunning of designing men; and the more honeft they are, they are the lefs apt to be fufpicious. This mode of proceeding had it's defired effect, and the board accepted of Mr. Ottiwell's propofal, without making any enquiry whatfoever concerning the value of the grounds, or the materials that flood upon them, notwithstanding that they never had tryed the opinion of the public concerning their value, by giving them an opportunity of propofing for them, or without ever confidering whether they were authorized by law to enter into fuch agreement. In February 1790, Mr. Sherrard had made by order of the board an eftimate of what the grounds to be let from Henry Street to Carliffe Bridge would produce, which he calculated at 29345*l.* this was done, preparatory to an application to Parliament. He had never been employed by the Board to make any eftimate, of what the grounds on the eaft of Sackville Street, between that and the Custom-Houfe would produce; but he had been employed by Mr. Beresford for that purpofe, in confequence of which he had on the 8th of January 1791, delivered to him his valuation, a copy of which is hereunto annexed; he therein eftimates the value of thofe grounds at 113870*l.* values 800 feet of faid grounds at *l.* 15*s.* a foot, 2365 feet (in which Beresford place is included) at *l.* 10*s.* and 678 feet confifting of Crofs Streets at *l.*

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This valuation was delivered to Mr. Beresford, near a month before the auction of the 7th February 1791, and no attempt was made to dispose of said grounds between that and the 6th of May, for which the reason alledged is, that from the conduct of the bidders at the said auction, it was apparent that there was a combination among them, and that therefore it would be to no purpose to make another experiment. Let it be considered, whether there was any reason to draw such a conclusion. The facts are shortly these: the grounds are set up above their value, no person will bid more than they are worth, and therefore it is concluded that the bidders have entered into a combination. Though it did not appear in this light to the board, it must have appeared so to Mr. Beresford and Mr. Sherrard, who knew that the value of the lots then intended to be set up, was estimated at about 30s. I would be understood by the word combination to mean, a *general combination*, not an agreement between individuals not to bid against each other: such ever has, and probably ever will subsist at auctions. Doctor Waite (*a*) says, he did not believe the Commissioners serious in setting the grounds the 7th of February 1791, and gives as one reason for such opinion, their having fixed so high a price upon the lots upon the first setting them up. That this proposal to be made by Mr. Ottiwell was in the knowledge of Mr. Beresford, previous to this alledged combination, appears from Mr. Caldwell's evidence (*b*), who states, that on the day when the auction was held, he went to Mr. Beresford, and expressed his disappointment at the want of success at the intended

(*a*) Report of the Lords Committee, page 61, 62, and 63.

(*b*) Ibid, page 89.

intended sale, whereupon Mr. Beresford replied, *do not be vexed as there is a great proposal coming forward*: as it does not appear that any other proposal has come forward, it must be supposed it was that of Mr. Ottiwell to which he alluded. The sequel plainly shews it: soon after the auction of the 7th of February 1791, Mr. Darley met Mr. Beresford, who recommended it to him to take 100 feet of the ground, which he declined on account of the high ground rent, which he understood he expected to be a good deal *above* 30s. (a). In a few days after that conversation, Mr. Beresford told him, that there was a proposal for the whole ground, at 22s. for the main streets, and 12s. for the cross streets, and asked his opinion, which he declared to be, that if any man, who could give good security, would give 24s. and 14s. it would be a very good job for the public. In about a week or ten days after this conversation, Mr. Beresford told Mr. Darley that Mr. Ottiwell had mended his proposal to 23s. and 13s. Mr. Darley said his opinion was that he should accept it.

From this account it may be collected, that all those conversations were within the month of February; from which time Mr. Beresford knew that Mr. Ottiwell intended making such proposal, as was afterwards laid before the Board; he had therefore, from February to May, an opportunity of comparing Mr. Ottiwell's proposal with the estimates of February 1790, and the 8th of January 1791, and seeing how far short it fell of those estimates made by Mr. Sherrard. It is observable that Mr. Darley, who was consulted, was not an officer of the Board, and that Mr. Sherrard, who

was

(a) Report of the Lord's Committee, page 17.

was their officer, and on whose valuations they very much relied, was never consulted by Mr. Beresford what he thought of such proposal. Mr. Beresford some time after pressed Mr. Harman to take part of those grounds in Beresford Place at a guinea and a half a foot. His answer was, he did not choose to speculate, although he thought the ground might set at that price. From the prices asked of Mr. Darley and Mr. Harman, it is evident that Mr. Beresford (if he was desirous that they should take them) did not think that those grounds had been overrated by Mr. Sherrard; and Mr. Darley says, that the most valuable grounds in the new line are Sackville-street, Abbey-street, and the quays, and that the grounds *next the city* would bring the highest price of any taken by Mr. Ottiwell (*a*). The grounds in Beresford Place are the most remote from the city of any of said grounds. Mr. Ottiwell's proposal was for grounds (the few lots advertised to be set up on the 7th of February excepted) of a nature different from any that had ever before been made to the board, as it related to grounds not in the possession of the Commissioners, but which were thereafter to be purchased. Mr. Beresford knew these grounds had never been advertised, and that therefore the public had not any opportunity of bidding for them. The Board generally meet every Friday, notwithstanding which, it appears from Mr. Sherrard's evidence (*b*), that such proposal was never communicated to the Board, as he (their Secretary) states, that he did not know either the value or extent of Mr. Ottiwell's proposal before it was given in, he therefore could not

(*a*) Report of the Lord's Committee, page 19.
 (*b*) Ibid, page 21.

not have been consulted by Mr. Beresford about it. It does not appear from the report, that Mr. Beresford ever communicated to the Board, or even to any individual of the Board, his having received such proposal, or that he asked the opinion of any of them about it; nor does it appear that he ever informed any of them of his having had such estimate made for him by Mr. Sherrard. Thus things stood on the 6th of May 1791. Mr. Ottiwell then gave in his proposal to the Board, on behalf of himself and partners; an order was thereupon made, that Mr. Sherrard do report against Friday next, the sum to which said proposal amounts. No enquiry was directed concerning the value of the grounds, or of the materials standing thereon, or opposite thereto, nor was any mention made of the valuation of the 8th January 1791 (a). The Board met on the 13th of May. Mr. Sherrard delivered in his calculation, making the amount of the rent payable by Mr. Ottiwell 5429*l.* 7*s.* 0*d.* and the value thereof 108587*l.* The Board thereupon, without any further enquiry, or without considering the extent of their powers, agreed to accept said proposal, one of the members only was against it, who strongly opposed it, and was against the business altogether. There having been some miscalculation in respect of the rents, it was soon after rectified, and the rent to be paid by Mr. Ottiwell ascertained to 5303*l.* 12*s.* 6*d.* the amount of which at 20 years purchase was 106072*l.* 10*s.*

The propriety of the conduct of the Board's having entered into this agreement, is now to be enquired into, which will depend upon the situation of things as they stood at that *time*. One might naturally expect, that if a transaction of such

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magnitude

(a) Report of the Lord's Committee, page 24.

magnitude was in agitation, far more comprehensive than had ever before been under the consideration of the Board, care should have been taken, that the intention of the Commissioners to receive proposals, should have been notified to the public. Mr. Sherrard (*a*) says, that he (the Secretary of the Board) did not know, previous to the time of Mr. Ottiwell's proposal having been given in, that the Commissioners would agree to set any of their grounds before that they should have acquired the possession of them, and that he had never before known them to set any under that predicament: that as no public notice had been given, it was not publicly known, previous to the time of giving in such proposal, that the Commissioners were willing to receive proposals, or enter into any treaty for the setting of those grounds which were included in his proposal, and were not in their possession: that they never signified their intention of advertising them; and that, if an advertisement had been inserted in the newspapers, it would have given an opportunity to other persons, as well as Mr. Ottiwell, to make proposals; and that as there was not notice, he conceived persons did not think of making proposals. If Mr. Sherrard, their officer, was not acquainted with such the intention of the Board, it surely may be concluded, that the public in general were ignorant of it.

As the estimate of the 8th of January 1791, relates to a considerable part of the grounds agreed to be set to Mr. Ottiwell, it is proper to examine into the nature of its contents, and whether the same was ever communicated to the Board. Mr. Sherrard had, by order of the Board, made an estimate

(*a*) Report of the Lord's Committee, page 27.

estimate of the produce of the Sackville-street line in February 1790, amounting to 29345/. The same grounds, calculated by him in February 1793, at the rate set to Mr. Ottiwell, amounted to 19319/. 1s. 8d. there is therefore a loss to the public in that line to 10025/. 18s. 4d. and Mr. Sherrard (a) informed the Committee, that he computes the difference of value of the rents according to his estimate of the 8th January 1791, in the lines East of Sackville-street, and the sums at which upon Mr. Ottiwell's rents they would amount to, to be at 20 years purchase 34154/. which being added to 10025/. 18s. 4d. amounts to 44181/. 18s. 4d. This then is the real difference between the value of the rents of all the grounds included in the agreement, as estimated by Mr. Sherrard, and the value of the rents as payable by Mr. Ottiwell. Mr. Sherrard (b) says, that the grounds valued by him in January 1791, were of as much value in May 1791, as in January 1791, and that if all those lots of ground had been set in detail, in the *usual manner*, as the Commissioners should get them into their possession, they would, according to his judgment, have brought as high a price as in the estimate which he had made at the desire of Mr. Beresford. This is fully supported by the evidence of Mr. Darcy and Mr. Glin, by which it appears, that such of the grounds as they describe, were set at rents far exceeding the valuation put upon them in Mr. Sherrard's estimate.

It comes now to be enquired, whether this material evidence was ever communicated to the Board, or laid before them. I shall state the evidence upon that head. Mr. Sherrard (c) says,

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that

(a) Report of the Lord's Committee, page 35 and 36.

(b) Ibid, page 32.

(c) Ibid, page 31.

that he never delivered any copy of the estimate made by him for Mr. Beresford, to any other of the Commissioners; except that, subsequent to the agreement with Mr. Ottiwell, he shewed the estimate to Mr. David and Mr. Digges Latouche, which was in consequence of an application to him, and that he believes neither of them knew the contents of the estimate before he furnished them with it—That to the best of his knowledge the Commissioners did not, in the conversation of the 13th May, *take any notice* of his estimate of the 8th January 1791. Mr. Swan (*a*) says, that he did not know what Mr. Ottiwell's proposal was until it was opened, and that he does not recollect that the valuation made by Mr. Sherrard was laid before the Board, either on the 6th or 13th of May, and does not believe that the Board was then informed that such an estimate had been made. Mr. Trench says, that he attended the Board the 13th of May, and that he never saw the estimate made by Mr. Sherrard; and Alderman Hamilton says, he does not recollect ever seeing such estimate. This evidence appears sufficient to shew, that such valuation never was laid before the Board, and that they did not know that such had ever been made. No doubt can be entertained but it was information very material for the determination of the Board, upon an agreement, new in its nature, and of a far greater extent than they had ever entered into before, and the subject matter of which had never been notified to the public. Mr. Beresford, at whose desire the estimate was made by the officer of the Board, and Mr. Sherrard who made it were both present; yet it appears, that it was not produced or communicated

cated by either of them to the Board. Had that estimate been laid before the Board, the question then for their consideration would have been, whether they would accede to a proposal which fell short upwards of 44000*l.* of the estimate which had been made by their own officer, upon whose skill in the valuation of grounds they very much relied, and whether they would not at least have suspended coming to any determination, until such time as they should have made some enquiry concerning the value of what they were about to dispose of, and have given an opportunity to the public to give in proposals for such grounds, by causing it to be notified, that they were willing to receive proposals for them. The public will consider whether the Board collectively were not as well entitled to every information obtained through the medium of their own officer as any individual of the Board could be. The Lord's Committee of 1793, do not appear to have known that such estimate had ever been made, they therefore resorted to evidence of the prices at which a considerable part of the grounds had actually been let for by Mr. Ottiwell, and the estimated value of the parts unset as computed by Mr. Sherrard, if to be let at a proportionable rate, from which it appeared that the probable profit to arise to Mr. Ottiwell would have amounted to above 6000*l.* a year; this was attempted to be accounted for by the rise of times in the value of those grounds,—the opportunity an individual had of obtaining high prices which a Board could not have,—instances of great rise in other grounds—and advantages which an individual could give to a tenant, which a public Board could not; a considerable part of the evidence in
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the printed report goes to the same points, of which I do not think it necessary to take notice, as I consider that evidence, liable to such objections, cannot be so satisfactory as an estimate made by the officer of the Board, previous to the agreement, and merely for the purpose of giving information to the gentleman considered as the most active member of the Board, and upon whom they principally relied in this business. These estimates made by Mr. Sherrard do not make the loss to the public so great as the evidence of the actual setting, laid before the Lord's Committee in 1793, but I have resorted to them in preference to the evidence laid before that Committee, as containing more precise and accurate information. The proposal was given in by Mr. Ottiwell (a few years before an officer of Excise in the county of Kildare) for grounds to be let at so large a rent as 5300*l.* a year, upon which there stood the materials of about 200 houses, many of them of considerable value; the proposal appears to have been accepted of by the Board without any enquiry whatsoever into the situation of the person who gave in the proposal, or who his partners were, or into the value of the grounds or materials upon them, or giving the public an opportunity of proposing for them. From these circumstances, I should imagine the Committee of 1793, well warranted in their resolution, that the Board had entered into a hasty bargain. Were the Board under apprehensions that Mr. Ottiwell would retract from his proposal, if they did not immediately close with him; or did they imagine, that the public would suffer by its being known, that they were willing to treat for such grounds, as they had not in their possession? or did they think that competition

competition was a dangerous thing, and might depreciate the grounds they had to set? The Board met the 17th May 1791, but four days after having entered into their agreement with Mr. Ottiwell, and appear to have been so sensible of the inexpediency of the measure they had so lately adopted, and so desirous to be freed from their engagement, that they for that purpose directed the agreement to be laid before council for his opinion, whether the Board were bound by that proposal to deliver the whole ground to him. (a) Let us now consider whether the agreement was not improvident, as well as hasty. By this agreement the Board bind themselves to give the grounds at a stipulated price, so that let the price at which they purchase be ever so great, it cannot add to the rent they are to receive, the event has shewn the imprudence of this agreement. Mr. Ottiwell has set a great part of those grounds intended to be purchased by the Board at those high rents mentioned by Mr. Darcy and Mr. Glinn; he has thereby put a stamp upon their value, and Juries are well warranted in ascertaining the sum to be paid to the Proprietors of such grounds in proportion to the rents at which they have been set: the entering into an agreement subject to such consequences may justly be called improvident. The loss to the public is not to be estimated by the difference between the rents they are to receive from Mr. Ottiwell, and those at which the grounds might have been set, if such agreement had not been entered into, but it also comprehends the additional price at which they are to purchase, in consequence of the high prices at which they

(a) Report of the Lord's Committee, page 26.

have

have been set by Mr. Ottiwell ; Mr. Sherrard has estimated the expence to the public of opening those passages, giving credit for the rents, as payable by Mr. Ottiwell, to amount to 87999^l. a sum so enormous, that it must put a total stop to the work, as the Commissioners can never justify the expenditure of so large a sum, upon an object comparatively of so little importance to the public. The next matter to be enquired into is, whether the agreement entered into with Mr. Ottiwell is such as falls within the power with which the Board are invested. This depends upon the Statute of the 31st Geo. II. Chap. 19. as no additional power has ever been given to them by any subsequent Statute. I shall transcribe the clause upon which their power depends. “ And where-
 “ as by reason of the purchases which the said
 “ Commissioners, by virtue of this act, are impow-
 “ ered to make, *they may happen* to be possessed
 “ of some *piece* or *pieces* of ground over and above
 “ what may be necessary for making a wide and
 “ convenient way, street, or passage from the said
 “ bridge to the said castle, and for the other pur-
 “ poses of the said act; it shall be lawful for them,
 “ or any five or more of them, to sell or dispose
 “ of or set for any term, &c. *such piece* or *pieces*
 “ of ground.” Mr. Wilson, a gentleman chosen by the Board as their council from their high opinion of his professional knowledge, has on a case laid before him in pursuance of an order from the Board, informed them, that they had not any power to set, sell, or dispose of any grounds, until *after* they shall have purchased the same, and acquired the possession of them. This fully supports the resolution of the Committee, which does not determine the question of law, but only affirms that it appears, by the opinion of their council,

cil, that they have exercised a power which did not belong to them. The words of the act are so very clear, that any man of tolerable ability, and who understands English, is as capable of determining the question as the ablest lawyer; and that it can only extend to the sale of such grounds as they have actually purchased. The board having never attempted for 37 years to exercise such power, shews their sense of it. Mr. Caldwell (a) one of the Commissioners says, that he never entertained an opinion that the Commissioners could set grounds which did not belong to them, nor had come into their possession; but believed they might make a general agreement to dispose of them at a certain rent, provided they should ever come into their possession.

It is now to be considered how far such agreement is binding, and upon whom. The Commissioners of wide streets are not a corporate body, but the powers with which they are invested have been given by the legislature to those individuals who are named in the Statute, and their successors, they are a fluctuating body, as the Lord Mayor and the Representatives for the said city, for the time being, must always be members of it, and consequently it must undergo some change every year. In some parts of the exercise of their powers, the legislature has authorised two, in others five, to act for the whole body; without which special provision, I conceive that the whole body only, or at least a majority of them, would have had power to act. There is not any authority whatsoever given to them by the act to set, or to enter into agreements to set grounds which they have not purchased, and got into their possession; for which many good reasons may be assigned. The Commissioners are better enabled to judge of the
nature

(a) Report of the Lord's Committee, page 83.

nature of grounds which they have in their possession, than they can do of grounds which they may hereafter (perhaps at a very remote distance of time) become possessed of. It would be an unreasonable power to give to any number of individuals, to oblige their successors (Trustees for the public) to carry into execution agreements not entered into by themselves, and which they might consider injurious to the public. The Statute is, Notice to every man who treats with those Commissioners, of the powers with which they are invested. The deed is drawn between the Lord Mayor, the Earl of Carhampton, Lord Baron Donoughmore, Lord Baron Mountjoy, the Right Honourable the Speaker, the Right Honourable John Beresford, the Right Honourable William Cunningham, the Right Honourable David Latouche, the Right Honourable Henry Grattan, the Honourable Henry Fitz-Gerald, commonly called Lord Henry Fitz-Gerald, and Andrew Caldwell, William Digges Latouche, William Colvill, Thomas Burgh, Frederick Trench, Charles Eustace, John Claudius Beresford, Samuel Hayes, John Swan, and Abraham Wilkinson, Esqrs. and Sir Thomas Blackhall, and James Hamilton, Esq; two of the Aldermen of the said city (comprehending all the individuals of the said Board, amounting to twenty-two) of the one part, and Henry Ottiwell of the other part. This deed was executed by eight of them only, *viz.* Lord Donoughmore, Lord Mountjoy, the Right Hon. John Beresford, Andrew Caldwell, Thomas Burgh, Frederick Trench, John Claudius Beresford, and John Swan; and it is observable, that neither the Lord Mayor, the Representatives of the city, or the Aldermen of the city executed the deed.

Whether

Whether those eight members had it in their power by this executory contract to bind, not only the fourteen members who did not execute it, but also their successors for ever, is a question submitted to the consideration of persons better qualified to determine it than I am. I shall however observe, that if they have such power, they may extend it to the end of time, not only in respect of such streets or passages as they themselves intend to make or widen, but also in respect of all such as their successors may think proper hereafter to make or widen. It is necessary that some line should be drawn, and none appears so reasonable, as that by which their powers should be limited to what they themselves are by law enabled to carry into execution. If an action should hereafter be brought by Mr. Ottiwell, for damages for non-performance of this agreement, against whom shall it be brought? Shall it be against the whole body, or only against those who executed the deed? Shall the damages be recoverable against the collective body as such, or against the individuals in their private capacity?

The next question is, whether there was any urgent necessity existing to justify the Board's entering into this hasty bargain, let their own conduct answer this question? They were on the 7th of February 1793, in possession of the grounds advertised by them; for three months, they never attempted to sell them either by auction or private contract. A proposal was laid before them on the 6th of May, 1791, and even that did not arise from notice given by them to the public, that they were willing to receive proposals for said grounds; the season was that best adapted to building. Having entered into the agreement with Mr. Ottiwell, the deed was
executed

executed on the 16th November, 1791; the commencement of the rents was to take place according to the time of the delivery of the possession, and yet the possession even of the grounds which they were actually possessed of in February 1791, was not given till May 1792. Consequently the improvements mentioned by Mr. Sherrard, to have taken place within the year after the agreement, could not arise from that cause. From all which it clearly appears, that the necessity of concluding was not so urgent, but that sufficient time might have been allowed for advertising the grounds, and for an enquiry into their value.

I shall now make some observations upon the proposal itself, and the manner of carrying it into execution. It was a proposal made on the behalf of Mr. Ottiwell and partners, to take the lots of ground at the specified rent of so much per foot lineal measure, with all the materials *thereon*. When the deed came to be executed, a particular clause came to be inserted therein, that the leases of the grounds agreed for should be made to Henry Ottiwell only, without taking notice of any of his partners, and it does not appear that any one of his partners has as yet been avowed. When he was examined before the Committee of 1793, he refused to answer whether he had any partners; a question which does not appear very dangerous to be put to a man, who had proposed in the name of himself and partners, unless there should be some private reason for not disclosing who his partners were. Upon such refusal to answer, having been reported to the House, what must appear very extraordinary, he was justified and supported in his refusal by persons of the first legal authority. It appears that

there were houses in the Sackville-street line, *opposite* to the lots set to Mr. Ottiwell, part of which had been given up to him, notwithstanding that by his proposal he required no materials, save only such as were *upon* the grounds agreed for by him. The materials of the houses which stand opposite to the lots, between Henry-street and Princes-street, have been estimated as worth 3000*l.* (a)

I have now gone through every charge made against the Lord's Committee of 1793, in the publication alluded to, and have supported their report by the evidence laid before the Lord's Committee of 1794—I have likewise, in support of the 3d, 4th, and 5th resolutions, clearly shewn that the agreement with Mr. Ottiwell was hasty and improvident—That the intention of the Board to set any grounds not in their possession, was never advertised or notified to the public—That there was not any urgent necessity to induce them to enter into so hasty a bargain—That the Board were not warranted by law to enter into such agreement, so far as it related to grounds not in their possession. And I have shewn, that the grounds set to Mr. Ottiwell would, according to the estimates made by Mr. Sherrard, previous to Mr. Ottiwell's proposal, have produced 44,000*l.* more than they would produce according to the rents payable by Mr. Ottiwell; and that such estimate, altho' made by their own officer, upon whose skill in valuation they very much relied, was not either laid before the Board, or communicated to them, previous to their having closed their bargain with Mr. Ottiwell. The Committee of 1794, were desirous of having examined such members of the House of Commons as were members of that Board, but were de-

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(a) Report of the Lord's Committee, page 63.

prived of an opportunity of doing so, from the opposition given in the House of Commons, upon a message sent down from the Lords, for liberty to examine them. I have annexed the resolutions of the Committee of 1793, to prevent the public from being deceived by their being mistated; and have also annexed a copy of the estimate delivered by Mr. Sherrard to Mr. Beresford on the 8th January 1791. In the publication of the 29th April, Mr. Sherrard's evidence is resorted to for the purpose of shewing that Mr. Beresford had asked his opinion, concerning a proposal intended to be made by a company of gentlemen, for the whole of those grounds, and that he had said it would be of public advantage, as it would expedite the business. The author should, however, not have withheld that material part of Mr. Sherrard's evidence which followed it, in which he says, that he considered Mr. Beresford's question to relate only to the whole of the grounds *advertised* to be set on the 7th of February 1791, to the East of Gardiner's-street. The question therefore must have been put without much precision, and his answer to it must be considered as an answer to the question in the sense he understood it. It is apparent that not one word of price could have been communicated to him, nor indeed was it necessary, as his opinion upon that subject had been already given to Mr. Beresford.

Before I conclude I shall submit to the Commissioners for wide streets, some observations relative to the powers with which they are invested. The power of compelling individuals to part with their property, is, in itself, repugnant to every idea of justice, and can only be admitted when the necessity of the public requires it: and, when-

ever

ever the Legislature enables a body of men to exercise such a power, it ought to appear clearly and expressly, how far it was in their intention it should extend: and, whenever the expressions are doubtful, they ought to be construed in support of the property of the individual. In the case in question, the necessity of the public is fully answered, by the proprietor parting with so much of his ground as shall be occupied by the street intended to be made or widened.

The purposes of the act are, the widening or altering any old street, or laying out any new one, and these purposes can fully be effected by the acquisition of so much ground as such street shall occupy. The statute impowers the Commissioners to determine the length, breadth, and line of such street as is intended to be made or widened; and they are thereby invested with a discretionary power of determining what quantity of ground is necessary to be procured for that purpose: they are impowered to agree for the purchase of such houses and grounds *as they shall think necessary* for the purposes of the act; and bodies politic, &c. trustees, guardians, committees of lunatics and idiots, &c. who shall be seized and possessed of houses, buildings, or ground which the Commissioners shall think necessary for the purposes of the act, are enabled to dispose of them, and in case they shall refuse to do so, there is a power to compel them, by the intervention of a jury. Though they may purchase by private agreement entered into with persons, masters of their estate, more ground than what is necessary for the purposes of the act; yet it appears (at least very questionable) whether the Legislature ever intended to give to trustees, guardians, committees of lunatics, idiots, &c. a power to part with more of the estates under

der their care, than what was actually necessary to be occupied by the street to be widened or made. The power of the Commissioners, by the intervention of a jury, to compel such persons to part with such property as is committed to their care, extends no farther than that which they have of disposing thereof by private contract. The very clause giving a power to set, shews what idea the Legislature had annexed to the words, *necessary for the purposes of the act*. They are empowered to set what they shall have *over and above what shall be necessary for the purposes of the act*, and have, agreeable to such construction, set all the ground of which they had acquired the possession, except what was actually occupied by the street. Their power of setting is peculiarly worded, "Whereas they may *happen* to be possessed of some *piece or pieces* of ground, &c. From such expressions it may reasonably be supposed, that those words were intended to relate to some small portions of ground, and probably only to voluntary purchases, where the seller might think it most convenient to him to part with a greater piece of ground than what the street would occupy; and it can hardly be supposed, that the Legislature would have expressed themselves in such a manner, if they had had it in contemplation, that they had thereby invested them with power so extensive, as to enable them to compel the persons described in that act, to give up to them such a tract of ground, and of so great value, as that which lies between Sackville-street and the Custom-house. By one construction there is a line drawn commensurate with the necessity of the public, but if their power is construed to extend beyond that, there will be no line drawn to prevent their possessing themselves

themselves of any part of the city of Dublin, which they shall choose to acquire.

I have so far considered this subject, upon the general powers given to the Commissioners by the statute of 31 Geo. II. chap. 19. I shall now advert to the particular circumstances attending the grounds lying eastward of Sackville-street, wherein I shall distinguish between those which lie on the North and South sides of Abbey-street. The only statute which gives them any power, to open or widen any street which had not before been authorised by Parliament, is, the 33 Geo. II. chap. 7. by which it is enacted, "that if at any time, or
 "times hereafter, any sum or sums of money shall
 "be granted by Parliament, or otherwise, to the
 "Commissioners aforesaid, or their successors, for
 "or towards making, widening, or rendering convenient any other way, street, or passage within
 "the city of Dublin, &c. the said Commissioners
 "and their successors, and any two of them in all
 "cases of trials by jury, and in all other cases, the
 "said Commissioners, or any five or more of them,
 "shall have, exercise, and enjoy all such powers
 "and authority for the purpose of making, widening, or rendering more convenient such other
 "way, street or passage, as were granted by the
 "said act to the Commissioners therein named, or
 "any five or more of them, for the purpose of
 "widening or rendering convenient any of the
 "ways, streets, or passages within the said city or
 "liberties adjoining thereto."

It is not alledged that any sums of money had been granted by *Parliament* for carrying those new streets east of Sackville-street into execution; and therefore, the question to be considered is, whether any sum of money granted in such other manner as the Legislature intended, under

the words *granted otherwise*, should invest them with those authorities described in the act of 34 Geo. III.

As the Commons hold the purse of the nation, it was certainly intended that such grant should be through their medium, and that such sum should be granted in consequence of an address from that House, and it can scarcely be supposed, that it was intended to invest the Commissioners, by a grant of any sum of money, with such power beyond the expenditure of the money so granted. In the year 1784, the Commissioners had not come to any determination concerning the lines to be run East of Sackville-street; nor were they finally settled, until they signed the map on the 12th day of November 1790; consequently no plan or estimate could have been laid before Parliament; and it appears, from their application at that time, and the address in consequence of it, that they had not any intention of opening any passage, except such as lay *between Drogheda-street and Mabbot-street*. In consequence of their application, the Commons addressed the Lord Lieutenant to grant them a sum not exceeding 10,000*l.* towards enabling them to open the passages from *Drogheda-street to Mabbot-street*, and to remove the glass house lying *in or near that line*. The whole of the sum then granted has been long since expended, and it appears that they have borrowed money to enable them to compleat their purchase from Mr. Moland. The Commissioners have upon their map hung up in the Exchange Coffee-house, run two lines, one of them from Abbey-street to the Custom-house, and another from Carlisle-bridge to the Custom-house, the latter called Eden-quay. This latter it will not be easy to include within the description

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in that address, of lying between *Drogheda-street* and *Mabbot-street*, as *Drogheda-street* extends no farther than *Abbey-street*, and is situate on the North side of it; it is therefore clear, that that line called *Eden's-quay*, which runs along the river, and all such parts of the cross streets which communicate with it, as lie on the South side of *Abbey-street*, do not fall within the description in the address. That no money has been granted by Parliament, or otherwise, for or towards carrying on that line, and consequently that the Commissioners have not any power whatsoever to intermeddle with such parts. Notwithstanding which, those parts which lie on the South side of *Abbey-street*, constitute a considerable part of the grounds which are included in the agreement with Mr. Otwell. If the Commissioners should exercise powers which they are not authorised to do by law; if they should compel guardians, committees of lunatics, or others, seized in *autre droit*, or persons under settlement, by which they are only tenants for life, to part with more ground than by law they are compellable to do; or if they should exercise such power over grounds, over which the law gives them no authority, their acts must in all such cases be mere nullities, and such persons as have expended their money in building upon such grounds, as they have without legal authority taken upon them to sell, will not be able to defend their titles thereto under that conveyance from the Commissioners. It is therefore submitted to that Board, whether, before they shall proceed farther towards carrying that trust into execution with which they are invested, it will not be prudent for them to take the ablest opinions concerning the nature and extent of their power, and what

what those grounds are, over which they have authority to act, as comprehended in the address of the 26th of March 1784. If they should thereupon find, that they have exceeded their powers, would it not be expedient to refer the whole to the wisdom of Parliament, in order that they might take into consideration the situation of such persons, as are in danger of losing their properties, through the misconception of the Commissioners, in respect of the powers with which they are invested; and that, for the direction of their future conduct, their powers may be so ascertained, as that there shall not be any danger hereafter of mistake in carrying the same into execution.

THAT



RESOLUTIONS

ENTERED INTO BY THE

COMMITTEE OF 1793.

The COMMITTEE came to the following Resolutions:

THAT by the price at which the seven lots in the street leading from Carlisle-bridge to Sackville-street were sold upon the 30th of March 1789, the Commissioners were furnished with evidence, from which they were enabled to judge of the value of the lots of ground in the said street.

THAT it appears that the lots in the said street, agreed to be set to Mr. Henry Ottiwell, at 23s. a foot, have by him been set at a rent of from 2l. 8s. to 3l. 5s. a foot.

THAT it appears that the Commissioners did make a hasty and improvident bargain with the said Ottiwell, at a considerable undervalue, and in which it appears, from the opinion given by their council, that they were not warranted by law, so far as it relates to those grounds which they had not at that time purchased, and of which they had not obtained the possession.

THAT it appears to this Committee, that there was not any urgent necessity to enter into so hasty a bargain, inasmuch as they were not at the time it was entered into, or at any time within six months afterwards, possessed of any part of the said grounds, save those few lots which had been exposed to sale on the 7th of February 1791.

THAT it appears to this Committee, that the intention of the Board, to set, sell, or treat for any
of

of the said grounds, agreed for with the said Ottiwell, save those offered to sale on the 7th of February 1791, was never made public, notified, or advertised, so as to furnish an opportunity to persons so inclined to bid for, or treat for the same.

THAT it appears to this Committee, that by means of the said bargain, the profit arising to the said Ottiwell in that single street, which leads from Carlisle-bridge to Sackville-street, is a clear yearly rent of upwards of 1600/. and the profit arising to him from the ground lying on the North side of Abbey-street, Beresford-place, Gardiner's-street, and Mabbot-street, is a clear yearly rent of upwards of 1800/. making in the whole 3400/. a year, and the loss to the public, in respect of such parts of the grounds set to said Ottiwell, is consequently in proportion to his profit.

THAT it appears to this Committee, that the materials which stood opposite to the lots, set to said Ottiwell, and which were of considerable value, have been delivered to him, although by his proposal and agreement, they are of opinion, that he was only entitled to the materials which stood upon the said lots.

THAT until such time as Parliament shall have an opportunity of taking measures for preventing the injury which may arise to the public, from the improvident conduct of the Commissioners respecting the said ground, it will be proper for them to suspend all proceedings towards purchasing any of the grounds eastward of Sackville-street.

THAT the said suspension will be the more necessary, inasmuch as it is very doubtful whether the Commissioners have by law any power to purchase or sell any grounds, for which special funds have not been granted, or special power given by act of Parliament.

GROUND



GROUND to Set, according to the
 PLAN laid out by THOMAS
 SHERRARD, *Viz.*

- No. I. From Sackville-street to Marlborough-street, north side of Abbey-street, 362 feet 112 deep, rere in Tucker's-row, estimated at 1/. 10s. per foot, and 20 years purchase, £.10,860
- II. Allowing 40 feet for the corner lot, there remains 80 feet to set in Sackville-street, between Abbey-street and Tucker's-row, estimated at 1/. 10s. per foot, 2,400
- III. In like manner there is 70 feet to set west side Marlborough-street, at 1/. per foot, 1,400
- IV. On continuation of Abbey-street, north side, between Marlborough-street and the new street laid out from continuation of Earl-street to the river, there is 292 feet 108 feet deep, a lane at the rere, at 1/. 10s. per foot, 8,760
- V. East side of Marlborough-street, 68 feet, at 1/. per foot, 1,360
- VI. West side new street, 68 feet, at 1/. per foot, 1,360
- VII. Continuation of Abbey-street, north side, from the new cross street to east side Lloyd's rope walk, 200 feet 108 deep, lane at rere, at 1/. 10s. per foot, 6,000
- VIII. From thence to corner of Beresford-place, north side Abbey-street, 110 feet, 115 deep, lane at rere, at 1/. 10s. per foot, 3,300
- IX. Be-

IX. Beresford-place to Gardiner's-street, 200 feet, 110 deep, lane at rere, at 1/ 10s. per foot,	£. 6,000
X. West side Gardiner's-street, 66 feet, at 1/. per foot,	1,320
XI. South side Abbey-street, opposite lot No. 8, 53 feet, at 1/. 10s. per foot,	1,590
XII. Opposite lot No. 7, 200 feet, 90 deep, lane at rere, at 1/. 10s. per foot,	6,000
XIII. Opposite lot No. 4, 290 feet, 90 deep, lane at rere, at 1/. 10s. per foot,	8,700
XIV. Opposite lot No. 1, 358 feet, 90 deep, lane at rere, at 1/. 10s. per foot,	10,740
XV. Eden-quay, from rere of Sackville- street to Beresford-place, 800 feet, depth about 110 feet, lane at rere, at 1/. 15s. per foot,	28,000
XVI. In cross streets between Abbey- street and Eden-quay, 474 feet, at 1/ per foot,	9,480
XVII. Beresford-place opposite west end of Custom-house, 220 feet, at 1/. 10s. per foot,	6,600
Total value,	<u>113,870</u>

